

### **REMARKS**

Claims 7-17 are pending in connection with the above-identified application.

#### **Interview with Patent Examiner**

An Interview was conducted with the Patent Examiner on March 20, 2009. Applicant's representative appreciates the time taken by the Examiner to conduct the Interview. An accurate summary of the Interview is provided in the Interview Summary form (PTOL-413) which forms a part of the present prosecution record. As noted therein, the Examiner indicated at the Interview that some additional comparative test data would be provided. This additional data is submitted in the form of the enclosed Declaration which is discussed in more detail below.

#### **Removal of Objection to Claim 16**

Claim 16 has been objected to because of a misspelling. Claim 16 has been corrected so as to remove the basis for this objection.

#### **Issues under 35 USC 103(a)**

Claims 7-17 have been rejected under 35 USC 103(a) as being unpatentable over Asrar '371 (US 2003/0060371).

This rejection is traversed based on the following reasons.

#### **Present Invention and Its Advantages**

The claimed subject matter of the present invention is directed to a method for increasing the yield in glyphosate-resistant legumes, which includes treating the plants with a synergistic mixture comprising a strobilurin Ia and a glyphosate derivative II, as well as the mixtures thereof. Preferred embodiments of the present invention are recited in claims 10 and 15-17 which encompass methods and mixtures that included (a) pyraclostrobin and (b) glyphosate in specific relative weight ratio amounts. The weight ratio amounts are further specified in claims 16 and 17. Evidence of the advantageous properties exhibited by the method and mixture of the present invention is provided in the Table at page 15 of the present application, wherein the

application of the combination of pyraclostrobin and glyphosate provides for synergistically enhanced yields as compared to application of glyphosate alone. In order to further support the unexpected, advantageous properties exhibited by the method and mixture of the present invention, enclosed with this Amendment is a Declaration submitted under 37 CFR 1.132 (hereinafter the "Brahm Declaration") which provides further comparative test results. The Brahm Declaration show that application of pyraclostrobin alone results in a slightly improved yield efficacy of 5.6%, while application of pyraclostrobin in combination with glyphosate provides for a synergistically improved efficacy of 25.8%. The Brahm Declaration is being provided in response to the discussion conducted at the Interview with the Patent Examiner noted above. Consequently, it is submitted that the present record includes evidence in support of the unexpected, advantageous properties of the present invention which support the patentability of the present claims over the cited reference which is discussed in more detail below.

*Distinctions over Asrar '371*

Asrar '371 discloses a method for improving the yield and vigor of an agronomic plant, such as soybeans, by treating the plants and/or their propagation material with a composition that comprises an active agent, such as a diazole fungicide, a triazole fungicide or a strobilurin-type fungicide (see abstract and paragraph [0013]). The method can be carried out by seed treatment or, after the plants have sprouted, by foliar applications. In the latter case, the active agent can also be combined, if desired, with other agents, such as herbicides. If the supplementary active agent is an herbicide, it is preferred that the plant be a transgenic plant having a transgenic event that provides resistance to the particular herbicide used. The aim of this combination is said to be "to obtain further beneficial results" (see paragraph [0028]). The Asrar '371 document is silent about what is meant by these "further" beneficial results. Thus, a skilled person must deduce that this combination is only intended to combine two different, independent positive features, namely the improvement of the vigor/yield by the fungicide plus a protection of the plant against unwanted weeds by the herbicide. There is not the slightest hint regarding the combined action of a fungicide and a herbicide to increase crop yield.

In contrast, the claimed subject matter of the present invention is directed to a method for increasing the yield in glyphosate-resistant legumes, which includes treating the plants with a synergistic mixture comprising a strobilurin Ia and a glyphosate derivative II, as well as mixtures thereof. In other words, the glyphosate derivative II is used as a synergist for the strobilurin fungicide Ia and thus serves a completely different purpose than in the Asrar '371 reference. Asrar '371 fails to recognize the synergistically and advantageously improved crop yield achieved by the present invention as evidenced by the comparative test results described at pages 14-15 of the present specification. This evidence has now been supplemented with the submission of the Brahm Declaration which further establishes that the method and mixture of the present invention exhibits unexpected, advantageous properties that fail to be recognized by Asrar '371. Consequently, significant patentable distinctions exist over Asrar '371. Even if prima facie obviousness is assumed to have been properly alleged, such obviousness has been rebutted by the evidence of unexpected, advantageous properties shown by the comparative test results. Thus, it is requested that the above rejection be withdrawn.

It is submitted for the reasons above that the present claims define patentable subject matter such that this application should now be placed in condition for allowance.

If any questions arise in the above matters, please contact Applicant's representative, Andrew D. Meikle (Reg. No. 32,868), in the Washington Metropolitan Area at the phone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: June 30, 2009

Respectfully submitted,

By 

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Enclosures: Declaration under 37 CFR 1.132